



**Michigan Supreme Court
State Court Administrative Office**

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John D. Ferry, Jr., State Court Administrator

Memorandum

DATE: October 27, 2004

TO: Judges
cc: Court Administrators, Probation Officers, Juvenile Registers and Officers

FROM: John D. Ferry, Jr.

RE: Sex Offender Registration Act Amendments; PA 237, 238, 239, and 240

On July 21, 2004, various amendments were made to the Sex Offenders Registration Act (SORA). These amendments have varying implementation dates.

PUBLIC ACT 239

PA 239 became effective October 1, 2004. It amended the crimes eligible for youthful trainee status to exclude violations of MCL 750.520b (Criminal Sexual Conduct (CSC) 1st degree); 750.520c (CSC 2nd degree); 750.520d (CSC 3rd degree), other than 750.520d(1)(a) (with victim 13 to 16 years old); 750.520e (CSC 4th degree), other than section 520e(1)(a), (with victim 13 to 16 years old and actor at least five years older); and 750.520g (Assault with Intent to Commit CSC), other than with the intent to commit a violation of sections 520d(1)(a) and 520e(1)(a), (CSC 3rd degree with victim 13 to 16 years old and CSC 4th degree with victim 13 to 16 years old and actor at least five years older). A court may not assign an individual to youthful trainee status if any of the following apply:

- (1) The individual was previously convicted of or adjudicated for a listed offense for which registration is required under the sex offenders registration act;
- (2) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses;
- (3) The court determines that the offense involved any of the following:

- (a) a factor set forth in MCL 750.520b(1)(a) to (h), (CSC 1st degree),
- (b) a factor set forth in MCL 750.520c(1)(a) to (l), (CSC 2nd degree),
- (c) a factor set forth in MCL 750.520d(1)(b) to (e), (CSC 3rd degree, other than with victim 13 to 16 years old),
- (d) a factor set forth in MCL 750.520e(1)(b) to (f), (CSC 4th degree, other than with victim 13 to 16 years old and actor at least 5 years older).

PUBLIC ACT 240

PA 240 became effective October 1, 2004. Several changes were made to the registration and reporting requirements of the sex offender registry.

After initial registration on the law enforcement registry, except for reporting a change in address within 10 days after the change is made, a juvenile adjudicated of committing an offense listed in section MCL 28.728c(15)(a)-(b) (see list below) when he or she was less than 17 years of age does not have to follow the continued reporting requirements until they reach age 18 and their registration is moved to the public registry. If the juvenile fails to file a petition for exemption before age 18, or if the petition is denied by the court, the juvenile must report as required under SORA. If the adjudicated offense was CSC 1st or 2nd degree, when the juvenile reaches age 18 the registration is moved to the public registry, and the individual must report as required.

Additionally, PA 240 allows a juvenile adjudicated of committing, attempting to commit, or conspiring to commit a CSC crime or assault with intent to commit CSC crime specified below to petition for exemption from the registry. A juvenile is required to register with the law enforcement registry until they can file a petition at age 17 and until that petition is approved by the court. It also allows an individual who was assigned to youthful trainee status prior to October 1, 2004, who successfully completes their period of probation to petition the sentencing court to reduce the number of years of registration and reporting on the public registry from 25 years to 10 years. (An individual assigned to youthful trainee status after October 1, 2004, is not required to register unless that status is revoked.) Whenever an order is issued by the court granting or denying a petition for exemption or alternative registration, the court must send a copy of the order to the Michigan State Police.

For individuals (juveniles and youthful trainee status) under a disposition order entered before October 1, 2004, a petition must be filed by October 1, 2007, or within three years after discharge from court jurisdiction, whichever is later. For individuals (juveniles) under a disposition order entered on or after October 1, 2004, the petition must be filed after his or her 17th birthday and before his or her 20th birthday. The court must hold a hearing on a proper petition.

If, before the court makes a decision on the petition, the individual is charged with a felony, the court may hold the petition in abeyance until final disposition of the new charge. Holding the petition in abeyance tolls the three-year limitation period for filing a petition until the period of abeyance has ended.

If the individual files the petition prior to transferring to the public registry, the court may issue a temporary order keeping the individual off the public registry for up to 30 days while deciding the petition. If court jurisdiction continues past the individual's 17th birthday, the court may order the individual off the public registry during the period jurisdiction is continued.

The right to petition applies to the following individuals (MCL 28.728c (a)-(c)):

- (1) An individual convicted as a juvenile under MCL 750.720b (CSC 1st degree), 750.520c (CSC 2nd degree), or 750.520d (CSC 3rd degree), of committing, attempting to commit, or conspiring to commit a violation solely described in MCL 750.520b(1)(a) (CSC 1st degree with victim under 13 years old), 750.520c(1)(a) (CSC 2nd degree with victim under 13 years old), or 750.520d(1)(a) (CSC 3rd degree with victim between 13 and 16 years old) if either of the following applies:
 - (a) The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
 - (b) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim.
- (2) An individual who was charged under MCL 750.720b (CSC 1st degree), 750.520c (CSC 2nd degree), or 750.520d (CSC 3rd degree) with committing, attempting to commit, or conspiring to commit a violation solely described in MCL 750.520b(1)(a) (CSC 1st degree with victim under 13 years old), 750.520c(1)(a) (CSC 2nd degree with victim under 13 years old), or 750.520d(1)(a) (CSC 3rd degree with victim between 13 and 16 years old) and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e (CSC 4th degree) or 750.520g (Assault with Intent to Commit CSC), if either of the following applies:
 - (a) The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.

(b) The individual was 13 years of age or older but less than 17 years of age when he or she committed committed the offense and is not more than three years older than the victim.

(3) An individual who has successfully completed his or her probationary period for committing a listed offense, and has been discharged from youthful trainee status.

A petition shall be not be granted if any of the following apply:

- (1) The individual was previously convicted of a listed offense for which registration is required;
- (2) The individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to commit a further listed offense;
- (3) The court determines that the offense involved any of the following:
 - a. a factor set forth in MCL 750.520b(1)(b) to (h), (CSC 1st degree, excludes conviction solely because victim under 13 years old);
 - b. a factor set forth in MCL 750.520c(1)(b) to (l), (CSC 2nd degree, excludes conviction solely because victim under 13 years old);
 - c. a factor set forth in MCL 750.520d(1)(b) to (e), (CSC 3rd degree, excludes conviction solely because victim between 13 and 16 years old); or
 - d. a factor set forth in MCL 750.520e(1)(b) to (f), (CSC 4th degree, excludes conviction solely because victim between 13 and 16 years old and actor more than five years older).
- (4) The individual is charged in this state or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the felony for which he or she has filed the petition for registration, or an offense that if committed by an adult would be a felony. This does not prohibit the court from holding the petition in abeyance pending the outcome of the charge.
- (5) The individual was sentenced for the offense as an adult. This does not apply to an individual who successfully completed his or her probationary period and was discharged from youthful trainee status.
- (6) The individual filed a previous petition that was denied after hearing.

In determining whether to deny or grant a petition, the court must consider the ages of the victim and offender and their levels of maturity at the time of the offense, the nature and severity of the offense, the individual's prior juvenile or criminal history, the likelihood of the individual committing a future listed offense, any victim impact statement submitted under the Crime Victim's Rights Act, and any other relevant information. The petitioning individual has the burden of showing by clear and convincing evidence that he or she is unlikely to commit future listed offenses.

If the court grants the petition for an individual who was adjudicated as a juvenile of an offense listed in MCL 28.728c(15)(a)-(b), the individual will be immediately removed from the registry. If the court grants the petition for an individual who was granted youthful trainee status, that individual will be required to register and report for 10 years from the date of the initial registration or 10 years from the date of release from incarceration, whichever is longer.

PUBLIC ACT 237

PA 237 became effective October 16, 2004. It provides for the collection of a one-time, \$35 registration fee for all individuals required to register with the Sex Offender Registry. This fee will not be collected until January 2005 when the individual reports for annual or quarterly address verification. If an individual is found to be indigent, the registration fee shall be temporarily waived. The burden is on the individual claiming indigence to prove indigency to the satisfaction of the local law enforcement agency, sheriff's department, or department post where the individual is reporting. An individual who willfully refuses or fails to pay the registration fee within 90 days of the date the individual reports is guilty of a misdemeanor.

Under PA 237, the \$35 registration fee may be collected by a court, local law enforcement agency, sheriff's department, or department post. Of the amount, \$25 shall be forwarded to the Michigan State Police to be placed in the sex offenders registration fund, and \$10 shall be retained by the registering agency. The Michigan State Police recommends that courts DO NOT collect the registration fee, but rather, inform the defendants that the fee will be collected when they report to a local law enforcement agency in January 2005. If a court does collect the \$35 registration fee but does not actually register the defendant, the court must forward the entire \$35 registration fee to the agency that actually registers the defendant. If a court collects the \$35 registration fee and also registers the defendant, the Michigan State Police will send quarterly invoices to the court. The Department of Treasury will not be amending the monthly transmittal form. If a court decides to establish a fee code and program the appropriate split, be aware that this will not go on the state transmittal form, and there will be no state account number. Invoicing and payments will be direct to/from the Michigan State Police.

PUBLIC ACT 238

On May 1, 2005, PA 238 goes into effect. It provides that a photograph of each registered individual be maintained by the Michigan State Police in its computerized data base.

If you have any questions or concerns, please feel free to contact Dawn Childress (childressd@courts.mi.gov) or Jean Mahjoory (mahjooryj@courts.mi.gov) at (517) 373-7496 or Tobin Miller (millert@courts.mi.gov) at (517) 373-7520.